

Attorney or Party Name, Address, Telephone &amp; FAX Numbers, and California State Bar Number

FOR COURT USE ONLY

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FILED

**OCT - 8 2004**

CLERK, U.S. BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
Deputy Clerk

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA

In re: MORTGAGE CAPITAL RESOURCE CORPORATION,

CASE NO.: SA 01-10726 JB

Debtor(s).

## NOTICE OF SALE OF ESTATE PROPERTY

**Sale Date:** 11/3/04

**Time:** 10:00 A.M.

**Location:** Courtroom 6D, Ronald Reagan Federal Building, 411 W. Fourth Street, Santa Ana, California

Type of Sale: ☒ Public ☐ Private Last date to file objections: 10/20/04

**Description of Property to be Sold:** Real Property located at 42957 Willow West, Lancaster, California 93536

**Terms and Conditions of Sale:** See Sale Notice Attached

Proposed Sale Price: \$117,000.00 with overbids at \$1,000.00 over the purchase price offered by the last bidder

Overbid Procedure (If Any): See Sale Notice Attached

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

Clarence Yoshikane  
Prudential California Realty  
2405 McCabe Way, Suite 100  
Irvine, CA 92614  
Tel: (949) 553-9799

Date: 10/7/04

January 2001

## Notice of Sale of Estate Property

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Attorneys for Richard A. Marshack  
the Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

In re	Case No. SA 01-10726 JB
<b>MORTGAGE CAPITAL RESOURCE CORPORATION.</b>	Chapter 7
Debtor.	<b>NOTICE OF CHAPTER 7 TRUSTEE'S MOTION FOR ORDER AUTHORIZING SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS PURSUANT TO BANKRUPTCY CODE 363(b)(1) AND (f); APPROVAL OF OVERBID PROCEDURES; AUTHORIZING PAYMENT OF REAL ESTATE COMMISSION; AND GRANTING RELATED RELIEF</b>
	Date: November 3, 2004 Time: 10:00 a.m. Place: Courtroom 6D Ronald Reagan Federal Building 411 W. Fourth Street Santa Ana, CA 92701

**PLEASE TAKE NOTICE** that on November 3, 2004 at 10:00 a.m. in Courtroom 6D of the above entitled Court located at the Ronald Reagan Federal Building, 411 W. Fourth Street, Santa Ana, California, 92701 the Chapter 7 Trustee ("Trustee"), for the bankruptcy estate of Mortgage Capital Resource Corporation ("Debtor"), will bring a motion For an order authorizing the sale of residential real property, located at 42957 Willow West, Lancaster CA 93536 (the "Property") free and clear of liens pursuant to Bankruptcy Code 363(b)(1) and (f), approval of overbid procedures in connection with the sale of the Property, authorizing payment of the real estate broker commission and granting related relief (the "Sale Motion").

**INTRODUCTION**

Richard A. Marshack, the Chapter 7 Trustee ("Trustee") for the bankruptcy estate of Mortgage Capital Resource Corporation ("Debtor"), brings this motion for an order authorizing the sale of residential real property, located at 42957 Willow West, Lancaster CA 93536 (the "Property") free and clear of liens pursuant to Bankruptcy Code 363(b)(1) and (f), approval of overbid procedures in connection with the sale of the Property, authorizing payment of the real estate broker commission and granting related relief (the "Sale Motion").

As set forth in more detail below, by this Sale Motion, the Trustee moves the Court for an order:

1. Approving the Purchase Agreement<sup>1</sup> related to and authorizing the Trustee to sell the Property of the estate to the Buyer free and clear of all liens and encumbrances, with liens and encumbrances, if any, not satisfied through the sale to attach to the proceeds of the sales in the same validity and priority as prior to the Petition Date.

2. Approval of certain overbid procedures described below.

3. In the event that the sale of the Property to the Buyer does not close within thirty (30) days of the entry of the Order approving the Sale Motion, the Trustee requests that the Order entered by the Court on this Sale Motion alternatively authorize the sale of the Property to any qualified buyer, without further notice, hearing or Court order as long as the Purchase Price is at least \$116,000 for the Property, and the remaining terms of the sale are substantially similar to the terms as provided in the Purchase Agreement with the Buyer, including the provision that the Property will be sold without warranties and on an "AS IS - WHERE IS" basis.

As set forth below, considering the length of time the Property has been listed for sale and the poor condition the Property was left in by the prior owners, the Trustee believes the Buyer's offer for the purchase of the Property to be in the best interest of the Debtor's bankruptcy estate and its creditors. Furthermore, the Buyer has already qualified for a loan to purchase the Property. Thus, good cause exists to grant the Sale Motion so that the Trustee does not lose this favorable business opportunity.

#### **NOTICE OF OVERBID PROCEDURES REGARDING THE SALE**

Trustee has determined that it would benefit the Estate by permitting all interested parties to receive information and bid for the Property instead of selling to the Property to the Buyer on an exclusive basis. Accordingly, in order to obtain the highest and best offer for the benefit of the creditors of this Estate, the Trustee also seeks Court approval of the following bidding procedures:

1. Potential overbidders must bid an initial amount of at least One Thousand Dollars (\$1,000.00) over the Purchase Price offered by the Buyer. Minimum bid increments thereafter shall also be One Thousand Dollars (\$1,000.00).

2. Overbids must be in writing and be received by the Debtor's counsel, Marshack Shulman Hodges & Bastian LLP to the attention of Leonard M. Shulman by no later than three (3) days prior to the hearing on the Sale Motion.

3. Overbids must be accompanied by certified funds in an amount equal to Five Percent (5%) of the overbid purchase price.

4. The overbidder must also provide evidence of having sufficient specifically committed funds to complete the transaction or a lending commitment for the bid amount or such other documentation relevant to the bidder's ability to qualify as the purchaser of Property and ability to close the sale and immediately and unconditionally pay the winning bid purchase price at closing.

5. The overbidder must seek to acquire the Property on terms and conditions not less favorable to the Debtor's bankruptcy estate than the terms and conditions to which the Buyer has agreed to purchase the Property as set forth in the Purchase Agreement and any competing bidder must be obligated to perform within the same time that the Buyer would be obligated to perform under the Purchase Agreement.

6. If overbids are received, the final bidding round shall be held concurrent with the Bankruptcy Court hearing on this Sale Motion in order to allow all potential bidders the opportunity to overbid and purchase the Property. *At the final bidding round to be conducted before the Court, the Trustee will seek entry of an order, inter alia, authorizing and approving the sale of the Property to the bidder who the Trustee, in the exercise of his business judgment, may determine to have made the highest and best offer to purchase the Property (the "Successful Bidder").* The hearing on the Sale Motion may be adjourned or rescheduled without notice other than by an announcement of the adjourned date at the hearing on the Sale Motion.

7. In the event Successful Bidder fails to close on the sale of the Property within the time parameters approved by the Court, the Trustee shall retain the Successful Bidder's deposit and will be released from his obligation to sell the Property to the Successful Bidder and the Trustee may then sell the Property to any qualified buyer as long as the sale price is at least \$116,000 and the terms of the sale and the remaining terms of the sale are substantially similar to the terms as provided in the Purchase Agreement with the Buyer, including the provisions that the Property will be sold without warranties and on an "AS IS - WHERE IS" basis.

8. The overbidder's deposit shall be refunded within five (5) days of the final bidding round in the event that the overbidder is outbid.

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<sup>1</sup> Capitalized terms are defined below.

The foregoing Bidding Procedures will provide for an orderly completion of the sale of the Property and insures that potential overbidders are provided with full disclosure as to the bidding procedures and the specific Property to be sold. By having all bidders compete on similar terms, the interested parties and the Court may compare competing bids in order to realize the highest benefit for the estate.

In support of the Sale Motion, the Trustee respectfully represents as follows:

#### **BACKGROUND INFORMATION**

##### **A. Case Commencement**

1. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on or about January 30, 2001 ("Petition Date"). Pursuant to Court order entered on or about
2. ///
3. June 28, 2002, the Debtor's bankruptcy case was converted to one under Chapter 7 of the Bankruptcy Code. Richard A. Marshack is the duly appointed, qualified and acting Chapter 7 Trustee of the Debtor's bankruptcy estate.

In documents filed with Court, the Debtor indicated that prior to the Petition Date, the Debtor operated a mortgage banking and brokerage business and that as of the Petition Date, the Debtor had ceased operations except for servicing of existing loans.

##### **B. Purple File Properties**

The Trustee is advised that the Debtor obtained the Property that is the subject of this Sale Motion through a loan flipping scheme which kept driving up the price. It appears that certain principals/directors/officers/employees/agents of the Debtor perpetrated a loan-flipping scheme whereby the Debtor suffered direct cash losses and incurred claims by warehouse lenders. Real property profiles demonstrate that for each of the approximately fifty properties, called the Purple File ("Purple File") properties, the title changed through sham transactions as often as every six weeks, which in turn caused the sale prices on the Purple File properties to increase. This procedure led to an artificially high value for the Purple File properties, including the Property that is the subject of this Sale Motion.

##### **C. The Property**

One of the assets of the Debtor's bankruptcy estate is the residential real property located at located at 42957 Willow West, Lancaster, CA 93536, legally described as follows: Lot 1 of Tract 28832, in the City of Lancaster, County of Los Angeles, State of California, as per Map recorded in Book 825 pages 97 to 100 inclusive of Maps, in the office of the County Recorder of said County<sup>2</sup> (the "Property").

The Property was acquired through litigation against the former owner, Diane David, who had acquired the property from the Debtor for little or no consideration. On or about September 24, 2003, the Court approved the settlement of the litigation (the "Settlement"). Pursuant to the Settlement Diane David conveyed the Property to the Trustee.

The Property was rented out by the prior owner and during this time suffered severe damage from a fire in one of the bedrooms. After the fire, the house was boarded up and has remained vacant since that time, approximately four years. No attempt was made to clean up the Property or to prevent further deterioration.

The listing price for the Property was set at \$110,000. Attached to the Yoshikane Declaration is a copy of a preliminary title report on the Property. The Trustee is advised that other than real property taxes in the approximate amount of \$4,696.52<sup>3</sup>, the Property is not subject to any liens or encumbrances that will need to be paid through escrow. Debtor was the secured lienholder of the Property; however, out of an abundance of caution, the Trustee seeks to sell the Property free and clear of liens with liens and encumbrances not satisfied through the sale to attach to the proceeds of the sale in the same validity and priority as prior to the Petition Date.

##### **D. Employment of the Estate's Real Estate Broker**

The Chapter 7 Trustee is in the process of obtaining authorization to employ Mr. Yoshikane as the estate's real estate broker. It is anticipated that by the time of hearing on the Sale Motion, the Trustee will have obtained a Court order

<sup>2</sup> The legal description is believed to be accurate but may be corrected or updated by the title company in the transfer documents as necessary to complete the sale of the Property.

<sup>3</sup>

2000, 2001, 2003 and 2004 property taxes	\$4,696.52
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approving Mr. Yoshikane's employment.

**E. The Purchase Offer for the Property**

The Trustee has received an offer through Mr. Yoshikane by Craig L. Griffin ("Buyer") to purchase the Property for \$116,000 cash ("Purchase Price"). The Buyer has deposited \$5,800 with the Trustee. Attached to the Declaration of Richard A. Marshack is a true and correct copy of the Contract for Sale and Purchase (the "Purchase Agreement").

In summary, the principal terms of the sale of the Property are as follows:

1. Closing Date. The closing date on sale of the Property shall be within thirty (30) days of the date of entry of the Court order approving this Sale Motion. In the event that the Buyer fails to pay the Purchase Price by the date scheduled for the close of escrow as provided in the Purchase Agreement and the Court order approving this Sale Motion, the Purchase Agreement with the Buyer shall be canceled, the Trustee shall retain any deposits provided by the Buyer, and the Trustee shall then be authorized to sell the Property to a new qualified buyer as long as the Purchase Price is at least \$116,000 for the Property, and the remaining terms of the sale are substantially similar to the terms as provided in the Purchase Agreement with the Buyer, including the provision that the Property will be sold without warranties and on an "AS IS - WHERE IS" basis.

2. Trustee Capacity. The Buyer shall be expressly aware and fully informed that the Trustee is selling the Property exclusively in his capacity as the Chapter 7 Trustee of the Debtor's bankruptcy estate. No personal liability for costs, fees or other charges on the Trustee's part is intended. Any liability is strictly the liability of the Debtor's bankruptcy estate. All other liability of the Trustee, or his agents or attorneys, is hereby released.

3. No Representations – Purchase Without Warranties. Buyer understands that the sale is "as is – where is", thus the Trustee is not making any representation, warranties, either express or implied as to the condition of the Property, uses (prior, present and future), or otherwise. Moreover, the Trustee shall not warrant or represent the Property's compliance with any applicable federal, state or local environmental laws, zoning laws or applicable regulation. The Buyer shall agree that as of the close of escrow the Buyer is acquiring the Property "as is", with all faults and conditions then existing on the property including any hazardous substances or hazardous waste that may be located on, under or around the Property, whether known or unknown, and Buyer shall assume all responsibilities for all such faults and conditions, whether disclosed or not. Moreover, Buyer is expressly aware and fully informed that the Trustee is selling the Property in his capacity as the Chapter 7 Trustee of the Debtor's bankruptcy estate. The Buyer acknowledges that the Buyer has inspected the Property, and upon Bankruptcy Court approval of the sale, the Buyer forever waives, for itself, and its successors and assigns, any and all claims against the Debtor, the Debtor's Estate, Richard A. Marshack as the Trustee and in his individual capacity, and his attorneys, agents, and employees, arising or which might otherwise arise in the future concerning the Property.

4. Bankruptcy Court Approval. The Trustee agrees to proceed in good faith to obtain Bankruptcy Court approval of the sale contemplated herein. The sale is expressly conditioned on approval of the United States Bankruptcy Court for the Central District of California, Santa Ana Division and entry of final order approving the Purchase Agreement. The Trustee makes no warranties, either express or implied, as to his ability to obtain approval of the Bankruptcy Court, and in the event that the Trustee is unable to obtain said approval, the Buyer shall hold the Trustee, his attorneys, agents and brokers harmless from any and all damages which the Buyer may allege it has suffered as a result thereof.

5. Final Order. The Purchase Agreement shall become final upon the entry of an order of the Bankruptcy Court authorizing the Trustee to enter into it and approving the terms set forth therein. Upon entry of the Bankruptcy Court order approving the Purchase Agreement, closing for the purchase of the Property pursuant to the terms of the Purchase Agreement and the Order approving the sale shall proceed without any undue delay. The parties agree that with respect to the provisions of this paragraph, time is of the essence.

6. Bankruptcy Court Jurisdiction. Since the Trustee is selling the Property in his capacity as the Chapter 7 Trustee for the Debtor's bankruptcy estate and further, since the Property is an asset of the Debtor's bankruptcy estate, the resolution of any and all disputes between the parties herein concerning the sale transaction shall be resolved by the United States Bankruptcy Court for the Central District of California, Santa Ana Division. Further the Trustee has agreed that if a dispute arises, such dispute may initially be resolved through the Mediation Program pending in the United States Bankruptcy Court for the Central District of California.

7. Approval of Disbursements From Escrow. The Trustee shall approve in writing all disbursements to be made from escrow on the sale of the Property. Escrow shall not be authorized to disburse any funds without the prior written approval of the Trustee.

8. Unknown Contingencies. If the Trustee is unable to complete escrow because of unknown defects in the title, or because the liens and encumbrances exceed the amount known to the Trustee, or by being divested of title by the

Bankruptcy Court, or because the income tax consequences of the sale are excessive, the Buyer's sole damages shall be limited to the refunds of any deposit less escrow charges. All other liability of the Trustee, or his agents or attorneys is hereby released.

9. Good Faith Finding. The proposed sale has been brought in good faith and has been negotiated on an "arms length" basis. The negotiations with the Buyer have resulted in an offer to sell the Property that will have substantial benefit. Accordingly, the sale is in good faith and should be approved. The Trustee shall request such a finding pursuant to Bankruptcy Code Section 363(m) at the hearing on this Sale Motion.

10. Real Estate Commission. Through escrow on the sale of the Property, and subject to Bankruptcy Court approval, the Trustee shall pay compensation for real estate broker services in a total amount not to exceed six percent (6%) of the gross selling price.

11. Sale Subject to Overbids. The sale of the Property is subject to the over bidding procedures described above in this Sale Motion.

**F. Estimated Net Sale Proceeds**

Through the proposed sale, the Trustee anticipates generating net proceeds of approximately \$102,023.48 as follows (amounts are estimated):

Purchase Price	<b>\$116,000.00</b>
Less Estimated Costs of Sale (8%)	(\$9,280.00)
Less Estimated Taxes Due	(\$4,696.52)
<b>Estimated Net Equity to the Estate</b>	<b>\$102,023.48</b>

**G. Request for Payment of Real Estate Commission for Property**

Through this Sale Motion, as provided in the Listing Agreement, the Trustee seeks authorization to pay a real estate broker commission of three percent (3%) to Mr. Yoshikane of Prudential California Realty, as the Seller's agent, and an additional three percent (3%) to the Buyer's agent.

**H. Approval of the Sale Motion Serves the Best Interests of the Estate and Its Creditors**

Considering the poor condition the Property has been left in by the prior owners, the Trustee believes the Buyer's offer for the purchase of the Property to be in the best interest of the Debtor's bankruptcy estate and its creditors. The Trustee is advised that the Debtor obtained the Property through a loan flipping scheme which kept falsely driving up the price. It appears that certain principals, directors, officers, employees and/or agents of the Debtor perpetrated a loan-flipping scheme whereby the Debtor suffered direct cash losses and incurred claims by warehouse lenders. Real property profiles demonstrate that for each of the approximately fifty properties, called the Purple File properties, the title changed through sham transactions as often as every six weeks, which drove up the sale price of the Purple File properties. This procedure led to an artificially high value for the Purple File properties, including the Property that is the subject of this Sale Motion.

The listing price of the Property was \$110,000, however, the Purchase Price tendered by the Buyer is \$116,000 and the Buyer has already qualified for a loan to purchase the Property.

Based on these facts, the Trustee believes that the proposed purchase price of \$116,000 for the Property is reasonable.

Furthermore, finding other buyers willing to purchase the Property in its current condition would be difficult. The proposed Buyer herein is aware of the problems with the Property and acknowledges that extensive costs may be required to make the Property ready for move-in condition and that all of such costs shall be at the Buyer's expense. Thus, the concessions that the Buyer is making to purchase the Property on a "AS IS - WHERE IS" basis in connection with the respective \$116,000 purchase price, ultimately provides substantial value to the estate for the purchase of the Property as the estate will not be required to expend any further funds to make needed repairs to the Property before it is sold and inhabited.

Thus, good causes exist to grant the Sale Motion so that the Trustee does not lose this favorable business opportunity.

**WHEREFORE**, the Trustee prays that the Court enter an order which provides:

1. Approving the bidding procedures set forth above for the sale of the Property.
2. Subject to the overbid procedures described above approving the Purchase Agreement related to and authorizing the Trustee to sell the Property to the Buyer free and clear of all liens and encumbrances with liens and encumbrances not satisfied through the sale to attach to the proceeds of the sale in the same validity and priority as prior to the Petition Date.
3. In the event that the sale of the Property to the Buyer does not close within thirty (30) days of the entry of the Order approving the Sale Motion, the Trustee requests that the Order entered by the Court on this Sale Motion

alternatively authorize the Purchase Agreement with the Buyer shall be canceled, the Trustee shall retain any deposits provided by the Buyer, and the Trustee shall then be authorized to sell the Property to any qualified buyer, without further notice, hearing or Court order as long as the Purchase Price is at least \$116,000 for the Property, and the remaining terms of the sale are substantially similar to the terms as provided in the Purchase Agreement with the Buyer, including the provisions that the Property will be sold without warranties and on an "AS IS - WHERE IS" basis.

4. Approving payment of the real estate commission in the amount not to exceed six percent (6%) of the gross selling price for the Property.

5. A determination by the Court that the Buyer or in such event that escrow does not Close, that any subsequent qualified buyer, is in good faith pursuant to Bankruptcy Code Section 363(m).

6. Waiving the ten-day stay of the order approving the sale of the Properties under Federal Rules of Bankruptcy Procedure 6004(g).

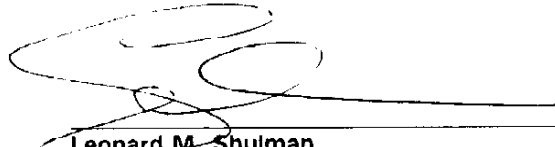
7. For such other and further relief as the Court deems just and proper under the circumstances of this case.

Requests for a copy of the Motion should be in writing and directed to Leonard M. Shulman of Marshack Shulman Hodges & Bastian LLP at the address indicated above.

**PLEASE TAKE FURTHER NOTICE**, that any response, opposition or joinder as to the proposed Motion must be in the form as required by Local Bankruptcy Rule 9013-1(a)(7) and filed with the Clerk of the above-entitled Court no later than fourteen (14) days before the date of the above-referenced hearing and a copy served on Marshack Shulman Hodges & Bastian LLP to the attention of Leonard M. Shulman at the address indicated above and the Office of the United States Trustee, Ronald Reagan Federal Building and United States Courthouse, 411 W. Fourth Street, Suite 9041, Santa Ana, CA 92701-8000. Failure to timely respond may be deemed as acceptance of the proposed Motion. SEE LOCAL BANKRUPTCY RULES 9013-1(a)(7) AND 9013-1(a)(11).

**Dated: October 8, 2004**

**MARSHACK SHULMAN HODGES & BASTIAN LLP**



**Leonard M. Shulman**

**Manijha Kadir**

**Attorneys for Richard A. Marshack,  
the Chapter 7 Trustee**